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10 Attorneys for Defendant
EXPERIAN INFORMATION SOLUTIONS, INC.
11

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 **NOEMIA CARVALHO,**
16 Plaintiff,
17 v.
18 **CREDIT CONSULTING SERVICES, ET**
19 **AL.,**
20 Defendant.

Case No. C 08-01317-JF-HRL

DECLARATION OF DEANNA L.
JOHNSTON IN SUPPORT OF
DEFENDANTS' JOINT MOTION TO
CONTINUE HEARING DATE AND
EXTEND TIME TO FILE OPPOSITION
TO PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION

Date: No Hearing Required
Time: No Hearing Required
Location: Courtroom 3

1 I, Deanna L. Johnston, declare as follows,

2 1. I am an attorney licensed to practice in the State of California, and an associate
3 with the law firm Jones Day, counsel of record for defendant Experian Information Solutions, Inc.
4 I have personal knowledge of the following facts, and if called upon to testify, I could and would
5 competently testify to the facts stated in this declaration.

6 2. I file this declaration in accordance with Local Rules 6-1 and 6-3 and in support of
7 defendants Equifax Credit Information Services, LLC (“Equifax”), Experian Information
8 Solutions, Inc. (“Experian”) and TransUnion LLC’s (“TransUnion”) (collectively “Defendants”)
9 Joint Motion to Continue Hearing Date and Extend Time to File Opposition to Plaintiff’s Motion
10 for Class Certification (“Motion to Extend”).

11 3. For the reasons stated below, Defendants request that this Court vacate the
12 September 26, 2008 hearing date on plaintiff’s Motion to Certify Class Action (the “Class
13 Certification Motion”) and reschedule the hearing to November 7, 2008.

14 4. Attached to this Declaration as Exhibit A is a true and correct copy of the August
15 21, 2008 letter I sent to plaintiff’s counsel, Ron Bochner, objecting to the September 26, 2008
16 hearing date.

17 5. Attached to this Declaration as Exhibit B is a true and correct copy of the August
18 21, 2008 letter I received (as a carbon copy) from Lewis Perling, Equifax’s counsel, to Mr.
19 Bochner objecting to the September 26, 2008 hearing date.

20 6. Attached to this Declaration as Exhibit C is a true and correct copy of the August
21 21, 2008 letter I received from Brian Frontino, TransUnion’s counsel, to Mr. Bochner objecting
22 to the September 26, 2008 hearing date.

23 7. Attached to this Declaration as Exhibit D is a true and correct copy of the August
24 25, 2008 email I received from Mr. Bochner refusing to continue the September 26, 2008 hearing
25 date.

26 8. Attached to this Declaration as Exhibit E is a true and correct copy of the August
27 25, 2008 email I sent to Mr. Bochner informing him of Defendants’ filing of this Motion to
28 Extend.

1 9. Defendants request this Court continue the hearing on plaintiff's Class
2 Certification Motion for the following reasons:

3 (a) Plaintiff failed to meet and confer with Defendants to select a mutually
4 agreeable hearing date;

5 (b) Experian's counsel has conflicts with the briefing schedule and is on a
6 prepaid, out of the country vacation until two days prior to the hearing date;

7 (c) Plaintiff's motion is premature because the parties have not yet had the
8 initial case management conference to discuss scheduling of the motion for class certification or
9 motion(s) for summary judgment;

10 (d) Plaintiff submitted an expert declaration of a previously undisclosed expert
11 in support of the Class Certification Motion;

12 (e) It would be prejudicial for Defendants to have only two weeks to oppose
13 such a complex motion; and

14 (f) TransUnion's Motion for Summary Judgment should be heard and decided
15 prior to plaintiff's Class Certification Motion.

16 10. Plaintiff's Class Certification Motion was served via ECF service on August 21,
17 2008. (Docket Nos. 72 – 75.) This was the first notice Experian had from plaintiff regarding the
18 filing of the Class Certification Motion or the hearing date.

19 11. Mr. Bochner failed to meet and confer with counsel for Experian prior to selecting
20 a hearing date for the Class Certification Motion as required by the U.S. District Court for the
21 Northern District of California, San Jose Division's Standing Order Regarding Case Management
22 in Civil Cases or regarding issues to be discussed at the September 19, 2008 Case Management
23 Conference.

24 12. It is my understanding that Mr. Bochner also failed to meet and confer with
25 counsel for Equifax prior to filing the Class Certification Motion and selecting the September 26,
26 2008 hearing date. (Ex. B.)

27 13. Had Mr. Bochner met and conferred with me, I would have informed him that
28 September 26, 2008 is not agreeable to Experian and would cause substantial harm or prejudice.

1 14. As described in my letter to Mr. Bochner (Exhibit A), I have a number of conflicts
2 with the September 26, 2008 hearing date and the opposition filing date of September 5, 2008.¹
3 First, I will be in Philadelphia on business on Thursday, September 4 and Friday, September 5,
4 2008. I have another matter, *Marvell Semiconductor, Inc., et al. v. HelloSoft, Inc.*, Santa Clara
5 County Superior Court, Case No. 07-CV-088753, scheduled for mediation with Judge Ronald
6 Sabraw (Ret.) on September 12, 2008, with a mediation brief due on September 5, 2008. The
7 mediation and briefing schedule in the *Marvell* matter were agreed upon by the parties on July 10,
8 2008. I have primary responsibility for drafting the mediation brief. I also will have primary
9 responsibility for drafting Experian's opposition to the Class Certification Motion. Having to file
10 both on the same date (September 5th) would be extremely difficult, especially since I will be out
11 of the office on other business and will not have access to a computer.

12 15. I also have a prepaid, out of the country vacation scheduled from September 17 -
13 23, 2008. I will not return to the office until September 24, 2008. Accordingly, preparing for the
14 September 26, 2008 hearing would be difficult.

15 16. The initial case management conference in this case is set for September 19, 2008.
16 Defendants believe that plaintiff's Class Certification Motion is premature because it should be
17 discussed between the parties and the Court at the case management conference in accordance
18 with Local Rules 16-9(b) and 16-10(b). Defendants believe that the case management conference
19 is the appropriate time to discuss:

20 (a) The hearing date and appropriate briefing schedule for plaintiff's Class
21 Certification Motion:

22 (b) The sequencing of plaintiff's Class Certification Motion versus TransUnion's
23 currently pending Motion for Summary Judgment; and

24 (c) The sequencing of plaintiff's Class Certification Motion versus Experian's
25 anticipated Motion for Summary Judgment.

26 |||

¹ In my letter to Mr. Bochner, I inadvertently identified the opposition filing date as September 12th. Experian's opposition is actually due on September 5th.

1 17. Plaintiff filed the Declaration of Evan Hendricks, proffering expert testimony, in
2 support of the Class Certification Motion. (Docket No. 75.) Prior to this declaration, plaintiff
3 never indicated that she intended to rely on expert testimony nor had she identified Mr. Hendricks
4 as a potential witness.

5 18. It may be necessary to conduct additional discovery regarding Mr. Hendricks'
6 opinions prior to filing Defendants' opposition(s). It would be unreasonable to expect Defendants
7 to conduct additional discovery or depose Mr. Hendricks prior to the September 5, 2008
8 opposition filing date. It may also be necessary for Defendants to retain an expert to provide
9 testimony in support of Defendants' opposition(s). It would similarly be unreasonable to believe
10 a rebuttal expert could be retained, familiarize himself/herself with the case facts and provide an
11 expert opinion as to Mr. Hendricks' conclusions prior to the September 5, 2008 opposition filing
12 date. The failure to adequately prepare a response to Mr. Hendricks expert declaration would be
13 severely prejudicial to Defendants.

14 19. Plaintiffs' Class Certification Motion is 24 pages in length and presents numerous
15 factual and legal issues which must be addressed in Defendants' opposition(s). Given that this is
16 the first time plaintiff has clearly identified the class which she seeks to represent and the basis
17 for her claims, it would be prejudicial to permit only two weeks for Defendants to prepare their
18 opposition.

19 20. TransUnion has a Motion for Summary Judgment currently pending before this
20 court. (Docket Nos. 78-80.) TransUnion informed plaintiff's counsel that it "elects to have its
21 summary judgment decided prior to class certification in this case." (Ex. C.)

22 21. On August 21, 2008, each of Defendants' counsel wrote to Mr. Bochner seeking a
23 stipulation to continue the September 26, 2008 hearing date, citing, among other bases, the
24 Standing Order's meet-and-confer requirement. (See Exs. A – C.)

25 22. Mr. Bochner responded via email on August 25, 2008 refusing to stipulate to
26 Defendants' request. (Ex. D.)

27 23. On August 26, 2008, I emailed Mr. Bochner and informed him of Defendants'
28 intent to file this motion. (Ex. E.)

1 24. There has never been a prior time modification relating to plaintiff's Class
2 Certification Motion. There have been two previous time modifications in this case. On May 30,
3 2008, this Court filed an Order Granting Defendant Equifax's Motion for Extension of Time to
4 File Its Response to Plaintiff's Motion to Remand. (Docket No. 28.) On June 26, 2008, this
5 Court continued the initial case management conference to September 19, 2008. (Docket No.
6 70.)

7 25. There currently are no pending dates other than plaintiff's Class Certification
8 Motion and TransUnion's Motion for Summary Judgment. Therefore, enlarging time to respond
9 to the Plaintiff's Class Certification Motion would have no effect on the yet-to-be-determined
10 schedule.

11 I declare under penalty of perjury under the laws of the State of California that the
12 forgoing is true and correct.

/S/ Deanna L. Johnston
Deanna L. Johnston

Exhibit A

August 21, 2008 Letter from Experian's Counsel to Plaintiff's Counsel

JONES DAY

555 CALIFORNIA STREET • 26TH FLOOR • SAN FRANCISCO, CALIFORNIA 94104-1500
TELEPHONE: 415-626-3939 • FACSIMILE: 415-875-5700

Direct Number: (415) 875-5736
djohnston@jonesday.com

August 21, 2008

VIA E-MAIL AND FIRST-CLASS MAIL

Ron K. Bochner, Esq.
LAW OFFICES OF RON BOCHNER
3333 Bowers Avenue, Suite 130
Santa Clara, California 95054

Re: *Noemia Carvalho v. Credit Consulting Services, Inc., et al.*
USDC NDCA – San Jose Div. – Case No. C07-01317 JF

Dear Mr. Bochner:

We received Plaintiff's Notice of Motion to Certify Class Action this morning via ECF service. This was the first notice Experian Information Solutions, Inc. ("Experian") had from plaintiff regarding the filing of this motion. Experian respectfully requests that you withdraw the notice.

First, Experian incorporates by reference the points raised in Lewis Perling's letter served earlier today. Experian agrees that plaintiff's motion is premature and violates Local Rules 16-9(b) and 16-10(b). We similarly agree that additional briefing time is appropriate.

Second, you similarly failed to contact Experian prior to selecting the September 26, 2008 hearing date. Unfortunately, that date is not agreeable to us. As you know, I have primary responsibility for handling this matter. I will be in Philadelphia on business during the week of September 2, 2008, have an all-day mediation on September 12, 2008 (the current filing date for Experian's opposition) and I have a prepaid vacation (out-of-the country) scheduled for September 17 – 23, 2008.

Lastly, additional discovery may be necessary to adequately prepare Experian's opposition. The declaration of Evan Hendricks proffering expert testimony was submitted in support of plaintiff's motion. Up to this point, plaintiff never indicated that she intended to rely on expert testimony nor was Mr. Hendricks previously identified as a potential witness.¹ Although we are still evaluating plaintiff's motion, it may be necessary to depose Mr. Hendricks and/or conduct additional discovery regarding his opinions prior to filing Experian's opposition. It would be prejudicial to expect Experian to conduct additional discovery regarding Mr. Hendricks' opinions and take his deposition prior to the September 12, 2008 filing date.

¹ Plaintiff refused to serve initial disclosures in June which likely would have identified Mr. Hendricks as a potential witness.

Ron K. Bochner, Esq.
August 21, 2008
Page 2

For the reasons stated above and as set forth in Mr. Perling's letter, we believe plaintiff's motion for class certification was improperly filed and that the current hearing date would prejudice Experian. Accordingly, please notify me no later than noon on Monday, August 25, 2008, whether you will agree to take the hearing off calendar. To the extent you refuse, please be advised that Experian will ask the court to do so with a request that the hearing date not be set until the parties can discuss the sequencing of summary judgment motions and the class certification motion, as well as a briefing schedule for the class certification motion, at the upcoming case management conference.

I look forward to your response.

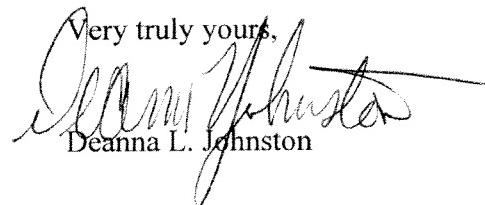
Very truly yours,

Deanna L. Johnston

Exhibit B

August 21, 2008 Letter from Equifax's Counsel to Plaintiff's Counsel

KING & SPALDING

King & Spalding LLP
1180 Peachtree Street, NE
Atlanta, Georgia 30309-3521
www.kslaw.com

Lewis P. Perling
Direct Dial: 404-572-3079
Direct Fax: 404-572-5172
lperling@kslaw.com

August 21, 2008

VIA EMAIL ONLY

Ron Bochner, Esq.
Law Offices of Ron Bochner
3333 Bowers Avenue
Suite 130
Santa Clara, CA 95054

**Re: *Carvalho v. Equifax, et al*
 United States District Court, Northern District of California
 Case No.: 08-1317JF(HRL)**

Dear Mr. Bochner:

I received via ECF service today Plaintiff's Notice of Motion to Certify Class Action. Equifax respectfully requests that you withdraw the notice and continue the matter to a later date. Pursuant to the Standing Order Regarding Case Management in Civil Cases [See Dkt. # 3], before selecting a hearing date for a motion before any of the judges of the San Jose Division, counsel must confer with opposing counsel to determine that the proposed hearing date will not cause undue prejudice. You did not confer with me regarding the date and the deadlines set by this hearing date pose a hardship on Equifax. Further, pursuant to Local Rules 16-9(b) and 16-10(b), the motion for class certification is premature as the scheduling of any such motion is to be set by the Court at the Case Management Conference, which has not yet occurred. Finally, the motion presents complex issues and Equifax will need additional time to prepare its response.

If you will not agree to take the matter off of the September 26, 2008 calendar, we will ask the court to do so. Please respond as soon as possible, and no later than Monday, August 25, so that we may take appropriate action.

Sincerely,

/s/Lewis P. Perling

Lewis P. Perling

cc: Counsel of record (via email)

Exhibit C

August 21, 2008 Letter from TransUnion's Counsel to Plaintiff's Counsel

STROOCK

Via Facsimile and U.S. Mail

August 21, 2008

Brian C. Frontino
Direct Dial 310-556-5943
BFrontino@stroock.com

Ron Bochner, Esq.
Law Offices of Ron Bochner
3333 Bowers Avenue, Suite 130
Santa Clara, California 95054

Re: Noemio Carvalho v. Credit Consulting Services, Inc., et al.
Monterey County Superior Court Case No. M80093
U.S.D.C. Northern District of California Case No. 5:08-CV-1317 JF

Dear Ron:

As you know, defendant TransUnion LLC ("TransUnion") intends to file a Motion for Summary Judgment in this action, and it is the defendant in a putative class action who decides whether summary judgment will be heard before class certification. Wright v. Schock, 742 F.2d 541, 544 (9th Cir. 1984); see also Katz v. Carte Blanche Corp., 496 F.2d 747, 759-60 (3d Cir. 1974) (en banc), cert. denied, 419 U.S. 885, 95 S. Ct. 152, 42 L. Ed. 2d 125 (1974). Because TransUnion elects to have summary judgment decided prior to class certification in this case, plaintiff's recently-filed motion for class certification cannot be heard on September 26, 2008. Second, pursuant to Local Rules 16-9(b) and 16-10(b), the hearing on class certification and corresponding briefing schedule are to be set by the Court at the initial Scheduling Conference, which currently is set for September 19, 2008.

If you will not agree to take the matter off calendar for September 26, 2008, we will seek relief from the Court. Please advise no later than Monday, August 25, 2008.

Sincerely,



Brian C. Frontino

cc: Stephen J. Newman, Esq.
Darius K.C. Zolnor, Esq.

LA 51078320

Exhibit D

August 25, 2008 E-mail from Plaintiff's Counsel to Defendants' Counsel



ron bochner
<robolawoak@yahoo.com>

08/25/2008 04:04 PM

Please respond to
robolawoak@yahoo.com

To dljohnston@JonesDay.com, bfrontino@stroock.com,
BGoheen@KSLAW.com, tquinn@nokesquinn.com,
scjones@JonesDay.com, snewman@stroock.com

cc

bcc

Subject carvalho v. equifax, et al.

History:

This message has been replied to and forwarded .

Counsel: Rule 23 requires that class certification motions be made at an early practicable time. Trans Union was specifically informed of the date of the hearing and made no objection. Contrary to Trans Union's assertions, there is no right to have a summary judgment heard before the certification motion. Equifax has not identified any prejudice from the date set and Experian has at least two attorneys who can respond to the motion.

Nonetheless, I will forward this email (as well as several emails from Trans Union regarding the newly set summary judgment motion) and the letters you sent me to the court, if the court clerk informs me this is appropriate. Atty. Ron Bochner.

Exhibit E

August 26, 2008 E-mail from Experian to Plaintiff



Deanna L
Johnston/JonesDay
Extension 3-5736
08/26/2008 04:27 PM

To robolawoak@yahoo.com
cc bfrontino@stroock.com, BGoheen@KSLAW.com,
scjones@JonesDay.com, snewman@stroock.com,
tquinn@nokesquinn.com, "Perling, Lewis"
bcc
Subject Re: carvalho v. equifax, et al.

Ron:

For the reasons set forth in our respective letters dated August 21, 2008, Defendants requested to take the September 26, 2008 hearing date for Plaintiff's Motion for Class Certification off calendar. Unfortunately, you refuse to agree. Accordingly, please be advised that Defendants will seek to continue the hearing date pursuant to Local Rule 6-3.

Please let me know if you have any questions. Thank you.

Regards,

Deanna L. Johnston
Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104
1.415.626.3939
1.415.875.5700 (fax)

dljohnston@JonesDay.com
ron bochner <robolawoak@yahoo.com>



ron bochner
<robolawoak@yahoo.com>

08/25/2008 04:04 PM

Please respond to
robolawoak@yahoo.com

To dljohnston@JonesDay.com, bfrontino@stroock.com,
BGoheen@KSLAW.com, tquinn@nokesquinn.com,
scjones@JonesDay.com, snewman@stroock.com
cc
Subject carvalho v. equifax, et al.

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Nonetheless, I will forward this email (as well as several emails from Trans Union regarding the newly set summary judgment motion) and the letters you sent me to the court, if the court clerk informs me this is appropriate. Atty. Ron Bochner.

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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

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